

REDACTED DECISION – DOCKET # 07-618 P – BY ROBERT W. KIEFER, JR., ALJ – SUBMITTED FOR DECISION on OCTOBER 29, 2009 – ISSUED on NOVEMBER 9, 2009.

SYNOPSIS

PERSONAL INCOME TAX -- TAXPAYER’S FAILURE TO CARRY BURDEN OF PROOF -- The failure of taxpayer to appear at a hearing and to present any evidence respecting his claim, will result in a denial of relief to the taxpayer. *See* W. Va. Code § 11-10A-10(e) [2002]; W. Va. Code. St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

FINAL DECISION

On October 3, 2007, the Unit Manager of the Accounts Monitoring Unit of the Internal Auditing Division of the West Virginia State Tax Commissioner’s Office (“the Commissioner”) issued an assessment for personal income tax against the Petitioner. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for the year 2003, for tax in the amount of \$____, interest in the amount of \$____, and additions to tax in the amount of \$____, for a total assessed tax liability of \$____. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked December 7, 2007, received in the offices of this tribunal, the West Virginia Office of Tax Appeals, on December 10, 2007, the Petitioner timely filed a petition for reassessment. W. Va. Code §§ 11-10A-8(1) [2007] and 11-10A-9 [2005].

At the time scheduled for convening the hearing, there was no appearance on behalf of the Petitioner. The hearing was held, however, without an appearance on behalf of the Petitioner, in accordance with the provisions of W. Va. Code § 11-10A-10(a) [2002] and W. Va. Code. St. R. § 121-1-69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. In his petition for reassessment, the Petitioner asserted that taxes had been withheld from his wages and that he was entitled to a credit for the amount that had been withheld. The Petitioner indicated that he needed to obtain the correct amount of withholding from his former employers.

2. The grounds articulated by the Petitioner, while adequate to show that the assessment is erroneous, unlawful, void or otherwise invalid, must be supported by evidence sufficient to satisfy his burden of proving that the tax is not due and owing.

3. The Petitioner was provided with notice that he was required to appear at the evidentiary hearing and present evidence respecting the reasons he believed that the assessment was erroneous, unlawful, void or otherwise invalid.

4. The Petitioner did not appear at the time and place of the hearing and presented no evidence respecting any of his allegations.

CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the Petitioner to show that any assessment of tax against him is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code § 11-10A-10(e) [2002]; W. Va. Code. St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

2. The Petitioner in this matter has failed to carry his burden of proving that any assessment of taxes against him is erroneous, unlawful, void or otherwise invalid.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the Petitioner for the year 2003, for tax in the amount of \$____, interest in the amount of \$____, and additions to tax in the amount of \$____, for a total assessed tax liability of \$____, should be and is hereby **AFFIRMED**.